



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services;
<b>VAC Chapter Number:</b>	12 VAC 30-80
<b>Regulation Title:</b>	Methods and Standards for Establishing Payment Rates-Other Types of Care
<b>Action Title:</b>	Supplemental Payments for Type I Physicians
<b>Date:</b>	

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

This regulation creates a category of physicians who are members of practice plans affiliated with either a state academic health system or an academic health system under a state authority and includes a hospital. The regulation authorizes Medicaid to make supplemental payments to these physicians for services provided to Medicaid recipients equal to the difference between the maximum permitted under federal law and regulations and what these providers are paid under the Medicaid physician fee schedule.

**Changes Made Since the Proposed Stage**

*Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.*

In subsection a, DMAS added a phrase “and includes a hospital” to the type of academic health system that organizes or controls a practice group of which a Type One Physician must be a member. This change was made because the purpose of the regulation in its final form is to substitute these physician supplemental payments for limited DSH funds used to cover indigent care costs at state academic health systems that include a hospital.

In subsection b, the final regulation specifies in detail how the maximum amount allowed as payment to Type One physicians is calculated. The maximum amount allowed is the average commercial payment expressed as a percent of Medicare rates. Before approving the parallel State Plan Amendment, Centers for Medicare & Medicaid Services (CMS), the federal Medicaid authority, required DMAS to specify the maximum amount, including detail on how it is calculated.

A new subsection c describes the frequency of supplemental payments because CMS requested DMAS to specify the frequency. New subsection d emphasizes that DMAS will not make duplicate payments. This was also added at the request of CMS.

**Statement of Final Agency Action**

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages regarding Supplemental Payments for Type I Physicians (12 VAC 30-80-30) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patrick W. Finnerty, Director  
Dept. of Medical Assistance Services

**Basis**

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

The Code of Virginia (1950) as amended, section 32.1-325, grants to the Board of Medical Assistance Services the authority to administer the Plan for Medical Assistance. The Code of Virginia (1950) as amended, section 32.1-324, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according the to the Board’s requirements.

Medicaid payments to physicians are subject to the requirement in the *Social Security Act* Section 1902(a)(30), that payments for services be consistent with efficiency, economy, and quality of care. To the extent that Medicaid payments to physicians are less than that permitted under federal law and regulations, DMAS may make supplemental payments to physicians.

**Please Note: DMAS' proposed regulations were published in the January 27, 2003, Virginia Register (VR 19:10 pp1464) for their public comment period from January 27 through March 28, 2003. There was a significant time lag between the publication of the proposed regulation for this action and the current final regulation. This lag is due to a lengthy negotiation between DMAS and the federal Centers for Medicare and Medicaid Services (CMS). CMS approval was required for this change in reimbursement; this regulatory process could not move forward until federal approval was obtained. DMAS only recently received that approval from CMS.**

**Purpose**

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

Chapter 899, Item 325AA of the *2002 Acts of Assembly* authorized the Department of Medical Assistance Services to develop and pursue cost savings strategies that focus on maximizing upper payment limits. Assuming that either the state academic health system, or academic health system under a state authority, provided DMAS the money needed to make the supplemental payment through a transfer agreement, DMAS would have been able to make the supplemental

payment at no net cost to either the Commonwealth or the academic health system. DMAS intended to negotiate these transfer agreements prior to making the Medicaid supplemental payments. After the Medicaid payment was made, DMAS could have drawn down the federal financial participation (FFP) related to the Medicaid payment.

Subsequent to Virginia's submission of this State Plan Amendment to CMS, this original strategy was no longer possible. Even though it no longer is a revenue maximization initiative, this regulation, as revised, has a long-term benefit to the Commonwealth because it conserves limited disproportionate share hospital (DSH) funding necessary to continue to cover Medicaid losses and indigent care costs at the state medical centers in the long-term. Increased payments to Type I Physicians affiliated with UVA and VCU Medical Centers will reduce DSH payments to UVA and VCU Medical Centers by an equal amount.

This proposed regulatory action will have no affect on the health, safety, or welfare of the citizens of the Commonwealth

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

The section of the State Plan for Medical Assistance affected by this amendment is Methods and Standards for Establishing Payment Rates-Other Types of Care (Attachment 4.19-B (12 VAC 30-80-30)).

The proposed regulation would create a category of physician (Type I) who is a member of a group affiliated with a state academic health system or an academic health system that operates under a state authority and includes a hospital. This includes physicians affiliated with UVA Medical Center and VCU Health System.

This regulation provides supplemental reimbursement for Type I physician services equal to the difference between the maximum amount permitted under federal law and regulation and the Medicaid fee schedule. If DMAS pays up to the commercial rates, this meets the federal standard that payments for services be consistent with efficiency, economy, and quality of care.

Providers affected by this action are Type I physicians receiving the supplemental payments. Localities affected are those with Type I physicians. Other providers and localities are not affected, and recipients are not affected.

Initially, DMAS proposed this regulation as part of a strategy of revenue maximization in 2003. Given changes at CMS, that is no longer possible. Even though it no longer is a revenue maximization initiative, this final regulation, as revised, has a long-term benefit to the Commonwealth because it conserves limited DSH funding necessary to continue to cover Medicaid losses and indigent care costs at the state medical centers in the long-term. Increased

payments to Type I Physicians affiliated with UVA Medical Centers and VCU Health System will reduce DSH payments to UVA and VCU by an equal amount. Based on the CMS approved State Plan Amendment DMAS plans to make payments for dates of service beginning July 2, 2002.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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Physicians affiliated with academic health centers fulfill an important and unique role within the Virginia health care system as safety-net providers. Many safety-net providers incur costs for which they are not currently reimbursed above and beyond the costs incurred by private providers.

Substituting physician supplemental payments for DSH payments that would otherwise be made helps to preserve limited DSH funds needed to cover indigent care costs at UVA Medical Centers and VCU Health System. No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change.

## Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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No comments were received during the proposed stage public comment period. DMAS' proposed regulations were published in the January 27, 2003, Virginia Register (VR 19:10 pp1464) for their public comment period from January 27 through March 28, 2003. No comments were received during this public comment period.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

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This regulation adds a new subsection numbered 16 to 12 VAC30-80-30.

Subsection a of subsection number 16 authorizes DMAS to make supplemental payments to Type I physicians for services provided on or after July 2, 2002. This subsection also defines Type I physicians as members of a practice group organized or under the control of either a state academic health system or an academic health system that operates under a state authority and includes a hospital.

Subsection b of subsection number 16 establishes how to determine the supplemental payment. The supplemental payment is equal to the difference between the maximum amount allowed under federal law and regulation and the current Medicaid payment. However, the Department cannot change payment amounts unless it meets federal notice requirements. The amount of the supplemental payment and the effective dates are based on the following public notices. DMAS published a public notice on July 1, 2002, that it would make supplemental payments equal to the difference between what Medicare would pay and what Medicaid pays. DMAS published a second notice on August 12, 2002, that it would make supplemental payments equal to the difference between the maximum amount allowed under federal law and regulation and the current Medicaid payment. The final regulation specifies the maximum amount allowed as the average commercial payment expressed as a percentage of Medicare fees.

A new subsection c describes the frequency of supplemental payments and new subsection d emphasizes that DMAS will not make duplicate payments.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulation has no impact on recipients or their families. It will not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; encourage or discourage economic self-sufficiency, self-pride; the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; strengthen or erode the marital commitment; nor increase or decrease disposable family income.